IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.523 OF 1996

FROM

COMPANY APPLICATION NO.127 OF 1995

IN

COMPANY PETITION NO.77 OF 1990

1.	Gharda Chemicals Limited, having its office at 48, Hill Road, Bombay - 400 050.	)
2.	Dr.Keki H. Gharda,	)
3.	Aban Keki Gharda,	)..Appellants. Original
	Both appellant Nos.2 & 3 residing at 48, Hill Road, Bandra, Bombay-400 505.	) Respondents Nos.1,2 & 4.
	V/s.	)
1.	Jer Rutton Kavasmaneck, @ Jer Jawahar Thadani, residing at 193, Jupiter Apartment, Cuffe Parade, Bombay - 4000 050.	)
2.	Darius Rutton Kavasmaneck, residing at 626, Parsi Colony, Dadar, Bombay - 400 014.	)
3.	Maharukh Murad Oomrigar, residing at T/176AA, Palm Beach, Juhu Tara Road, Bombay - 400 049.	)
4.	Dr.Percy Rutton Kavasmaneck,	)
5.	Aban Percy Kavasmaneck,	)
	Both residing at 628, Parsi Colony Dadar, Bombay - 400 049.	)
6.	Colin Mario Rebello,	)

7. Conard Anthony Rebello,)

Both residing at 1, Kostka House,)
St. Peter Co-operative Housing)..Respondents.
Society, 31-M, Gonsalves Road,) (original
Bandra, Bombay - 400 050.) applicants.
)
)
A N D)
)
)
8. Noshir K.Warden residing at 692,)
Chinoy Bldg., Dinshaw Master Road,)
Parsi Colony, Bombay - 400 014.)
)
9. Gharda Agro Chem Trust, having its)
office at 48, Hill Road, Bandra,)
Bombay - 400 050.)
)
10. N.M.Sharma, C/o.Gharda Agro Chem.)
Trust, having its office at 48,)
Hill Road, Bandra, Bombay-400 050.)
)
11. Hoshang C.Patel, C/o.Gharda Agro)
Chem.Trust, havings its office at)
48, Hill Road, Bandra, Bombay-50.)
)
12. Bai Ratanbai Gharda Hospital Trust,)
48, Hill Road, Bandra, Bombay-50.)
)
13. Mr.R.Kannan, C/o.Gharda Chemicals)
Limited, havings its office at 48,)
Hill Road, Bandra, Bombay-50.)
)
14. Mrs.A. Ruby Madon,)
)
15. Mr.Fali Madon,)
)
Both of Bombay, Indian)
Inhabitants, residing at)
Shalimar, Marin Drive)
Bombay - 400 020.)
)
16. Gharda Medical Foundation, having)
its oddress at 48, Hill Road,)
Bandra, Bombay - 400 050.)..Respondents.

Mr.Pravin Diwan, Advocate i/b. Maneksha & Sethna for the appellants.

Mr.S.A.Diwan, Advocate with Snehal Shah i/b.Dhruva & Co. for the respondents.

CORAM : R.M.LODHA AND J.P.DEVADHAR, JJ.

DATED : 20TH JULY, 2005.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. Where the shares of a company are held jointly, whether a power of attorney executed by the first holder empowering a specified person to vote in respect of the shares held jointly is valid and whether a power of attorney is a proxy are the main issues raised in this appeal. The Chairman presiding over the 28th Annual General Meeting of the appellant No.1 company ruled that the votes cast by the power of attorney holder in respect of shares held jointly are invalid because, firstly, the power of attorney is executed by the first holder only and not by both the joint shareholders and secondly, the votes cast were in excess of the number of shares set out in the power of attorneys. The learned company Judge reversing the ruling of the Chairman held that the power of attorney executed by the first holder is valid. The learned Company Judge held that the power of attorney is a proxy and that the votes cast by the power of attorney holder to the extent of the number of shares specified

in the power of attorney are valid. Hence this appeal.

2. The appellants are the original respondent Nos.1, 2 and 4. The respondent Nos.1 to 7 are the original applicants and the other respondents are original respondent Nos.8 to 13. The appellant No.1 (‘the company’ for short) was incorporated on 6/3/1967 as a private limited company by shares and with effect from 17/8/1988 it is a deemed public company limited by shares by virtue of section 43-A of the Companies Act, 1956 (‘Act’ for short). The respondent Nos.1 to 7 (‘the applicants’ for short) at the relevant time held approximately 28% of the total share holdings and the respondent Nos.2 to 13 held the remaining 72% of the shares of the company.

3. The applicants had filed Company Petition No.77 of 1990 in this Court under section 397 and 398 of the Act seeking appropriate reliefs under sections 402 and 403 of the Act. In view of certain allegations regarding the conduct of extra-ordinary general meeting of the company held in 1990, the parties approached this Court seeking appointment of a person as Chairman for conducting the Annual General Meeting of the company. Accordingly, Justice Rege, former Judge of this Court was appointed as Chairman from time to time and he has conducted the 24th, 25th & 26th Annual

General Meeting of the company.

4. The 28th Annual General Meeting of the company was held on 30th November, 1994 as per the notice dated 2/11/1994. Justice Rege presided over the said meeting as Chairman as per the order passed by this Court. In the said Annual General Meeting, one of the scrutineers appointed by the Chairman objected to the votes cast by Mrs.Hirji as power of attorney holder of applicant Nos.4 & 5. The first objection was that both the power of attorneys have been executed in favour of Mrs.Hirji by the first holder only and not by both the joint shareholders, i.e. in respect of shares held jointly by applicant Nos.4 and 5 the power of attorney dated 27/3/1990 is executed by applicant No.4 only and in respect of shares held jointly by applicant Nos.5 and 4 the power of attorney dated 27/3/1990 has been executed by the applicant No.5 only. The second objection raised was that the power of attorney holder had voted in excess of the number of shares authorised under the respective power of attorneys. Mrs.Hirji voted in respect of 4301 shares even though she was empowered under the two power of attorneys to vote in respect of 4208 (3208 + 1000) shares.

5. The Chairman, after considering the objection as well as the reply filed by applicants gave his

ruling which reads as follows:-

"Per Chairman:

Heard the scrutineers

The objection by Shri Dayal and reply thereto by Shri.D.Kavasmaneck taken on record.

Power of attorney for 3208 shares by Percy Kavasmaneck in favour of Mrs.Hirji held invalid as admittedly out of the said 3208 shares - a lot of 2299 shares are held jointly by Percy & Aban Kavasmaneck when the P/A is only by Percy in respect of 3208 shares. However, although the P/A is only for 3208 shares Mrs.Hirji voted 3280 shares. The P/A and the voting by Mrs. Hirji on 3280 is invalid.

Another P/A by Percy in favour of Mrs.Hirji for 1000 shares is in respect of 1000 shares held jointly by Aban & Percy. However, the P/A is only by Aban only.

Further voting by Mrs.Hirji under the P/A is in respect of 1021 shares.

I hold therefore that P/A so also voting by Mrs. Hirji under the said P.A. in respect of 1021 shares is invalid."

We may note that the votes cast by Mrs.Hirji in the said 28th Annual General Meeting were against Special Resolution Nos.6,7 & 8. In view of the ruling of the Chairman that the 4301 votes cast by Mrs.Hirji are invalid, the special resolutions No.6,7 and 8 put to vote at the 28th Annual General Meeting were declared as carried and passed by a margin of 86 votes.

6. Challenging the above ruling of the Chairman, the applicants filed Company Application No.127 of 1995

in the pending Company Petition No.77 of 1990 inter alia on the ground that the ruling of the Chairman is erroenous on a point of law. The applicants prayed that the ruling of the Chairman in rejecting the 4301 votes cast by the power of attorney holder be set aside and consequently, the ruling given on special resolution Item Nos.6, 7 & 8 be reversed and it be declared that at the 28th Annual General Meeting, the Special Resolution Nos.6, 7, & 8 were defeated. The said company application was opposed by the appellants inter alia on the ground that in the absence of any allegation of malafides or fraud on the part of the Chairman, the ruling of the Chairman could not be challenged. It was further stated that the application has been filed with malafide intentions to harass the shareholders and the company. It was stated that the ruling of the Chairman in the Annual General Meeting could never be the subject matter of the proceedings under section 397 and 398 of the Companies Act. It was further stated that a power of attorney is not a proxy and a power of attorney unlike a proxy has to be signed by all the joint shareholders and, therefore, the votes cast on the basis of a power of attorney executed by the first holder only were liable to be rejected as invalid.

7. In the impugned Judgment and order dated

7/4/1995, the learned company Judge noted that the right of a power of attorney holder to vote was neither objected to at the Annual General Meeting nor the votes were rejected on the ground that the power of attorney is not entitled to vote. The votes were rejected by the Chairman because the power of attorneys were signed by the first holder only and not by all the joint share holders.

8. The learned company Judge referred to Article 101 of the Articles of Association framed by the company which reads as under :-

> "101. Where there are joint registered holders of any share, any one of such persons may vote at any meeting either personally or by proxy in respect of such share as if he were solely entitled thereto; and if more than one of such joint-holders be present at any meeting personally or by proxy then one of the said persons so present whose name stands first on the Register in respect of such share shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased member in whose sole name any share stands shall for the purposes of this Article be deemed joint-holders thereof and their seniority determined by the order in which their names are entered in the Company's records."

In the light of the aforesaid Article 101, the learned company Judge held that, since the first holder is empowered to vote in respect of shares held jointly, it was open to the first holder to execute a power of attorney and confer that power to a specified

person. Therefore, the power of attorney executed by the first holder only is valid and consequently the votes cast by such power of attorney holder would be valid.

9. The learned company Judge further held that the power of attorney is a proxy because neither under the Act nor under the Articles of Association of the company the proxy is required to be executed in any prescribed form. The learned Judge noted that Article 109 of the Articles of Association of the company merely provides that the proxy should be as near as practicable to the form set out in Schedule IX of the Act. The Articles of Association of the company nowhere provides that a document of proxy would be invalid if that document confers not only the power to vote but some other powers also and, therefore, the power of attorney executed by the applicant Nos.4 and 5 clearly amounts to proxies within the meaning of the articles of association framed by the company. Accordingly, the learned Judge held that the proxy votes cast by Mrs.Hirji could not be rejected as invalid.

10. Even assuming that the votes cast in respect of shares held jointly were invalid, the learned company Judge observed that the applicant No.4 held 960

shares in his individual name and, therefore, the 960 votes cast by the power of attorney holder under the power of attorney executed by the applicant No.4 against special resolution No.6,7 & 8 would be valid. If these 960 votes cast against the special resolution No.6,7 and 8 are taken into account, then the special resolution Nos.6,7 & 8 declared to have carried by a margin of 86 votes would have to be declared as defeated. Accordingly, the learned Judge held that the Company may convey a special general meeting to consider Special Resolution No.6, 7 and 8 which were wrongly declared to have been passed in the 28th Annual General Meeting of the Company.

11. Mr.Pravin Diwan, learned counsel appearing on behalf of the appellants submitted that the scope of judicial review in respect of the Chairman’s ruling is limited. He submitted that it was for the applicants to establish that the ruling of the Chairman on the submissions made before him were bad in law or vitiated by fraud or malafides. In the instant case, fraud or malafide has neither been alleged nor established and, therefore, the learned company Judge ought not to have reversed the ruling of the Chairman.

12. Counsel for the appellants further submitted that the contention of the applicant before the

Chairman was that the votes cast by the power of attorney without the execution of a deed of proxy were valid. It was not the contention of the applicants before the Chairman that the power of attorneys should be treated as proxies. However, before the learned company Judge, the applicants changed their stand and contended that the power of attorney should be treated as proxy. Since the issue as to whether the power of attorney is a proxy was not raised and not considered by the Chairman, it was not open to the applicants to canvass before the learned Judge that the power of attorney is a proxy. Accordingly, counsel for the appellants submitted that the findings given by the learned Judge that the votes cast by the power of attorney holder are valid on the ground that the power of attorney is a proxy cannot be sustained.

13. Learned counsel for the appellants further submitted that the power of attorney cannot be treated as proxy because both the power of attorneys executed by the applicant Nos.4 and 5 as also the Articles of Association of the company, differentiate and distinguish between "power of attorney" and "proxy" and, therefore, the learned company Judge ought not to have held that the power of attorney is a proxy. He submitted that if the power of attorney is considered to be a proxy, then clause 2 of the power of attorney

which specifically empowers the power of attorney to appoint a proxy would become redundant or superfluous, because, in law a proxy cannot appoint a proxy. He submitted that the Courts ought not to interpret documents which are destructive of a portion of any of its clauses. Moreover, when the deed empowers the power of attorney holder to appoint a proxy, by no stretch of imagination the deed itself can be considered to be a proxy. He submitted that the challenge to the ruling of the Chairman can only be by establishing that the power of attorneys are valid and that the votes cast under the power of attorneys are valid and not by construing the document as proxy, especially when a such contention was not even raised before the Chairman.

14. Counsel for the appellants further submitted that the learned Judge could not construe the power of attorney as a proxy, because, the document itself did not purport to be proxy, the same was not lodged with the company as a proxy and the company did not construe it to be a proxy. Even before the Chairman, the applicants did not ask the Chairman to consider the power of attorney as a proxy. Under the articles of association an instrument of proxy is required to be in consonance with Schedule IX of the Act. The counsel submitted that under the articles of association,

shareholders can vote at the meeting of the company either personally or by proxy. The proxy can be appointed either by the share holder or by the power of attorney holder. In the present case, neither the shareholder has appointed a proxy nor the power of attorney holder in exercise of her power under clause 2 of the power of attorney has appointed a proxy. Therefore, Mrs.Hirji the power of attorney holder could not herself vote at the meeting without executing a deed of proxy in her favour. Counsel submitted that if two words having similar connotations are used in the same document, then both words should be given distinct meaning and one word should not be construed to have the same meaning as the other. Learned counsel submitted that various decisions referred to by the learned company Judge are distinguishable on facts. Accordingly, learned counsel for the appellants submitted that the Judgment of the learned company Judge suffers from serious infirmities and the same is liable to be quashed and set aside.

15. Mr.Shyam Diwan, learned counsel appearing on behalf of the applicants submitted that in the past the company had accepted the very same power of attorneys executed by the applicant Nos.4 & 5 in favour of Mrs. Hirji and the votes cast by the said Mrs.Hirji have been held to be valid. Therefore, it was not open to

the company to dispute, belatedly, the validity of the power of attorneys and consequently the votes cast by the power of attorney holder in the 28th Annual General Meeting of the company.

16. Learned counsel for the applicant Nos.4 & 5 further submitted that in any event, on reading various articles of association of the company, especially Article 114, it is clear that not only the share holder and the proxy holder but some other authorised person is also entitled to vote at the meeting. In other words, even a power of attorney holder can vote at the Annual General Meeting provided the power of attorney is in consonance with the form set out in Schedule IX of the Act. In the present case, both the power of attorneys dated 27/3/1990 executed by the applicant Nos.4 & 5 in favour of Mrs.Hirji were forwarded to the company and the same were duly registered in the books of the company. In fact, voting slips have also been issued by the company authorising the power of attorney holder Mrs.Hirji to vote at the 28th Annual General Meeting of the company. Therefore, it cannot be disputed that the power of attorney holder is entitled to vote at the meeting of the company.

17. Learned counsel for the applicants further submitted that as per Article 101 of the articles of

association of the company, where more than one joint shareholders are present at the meeting, then, it is the first holder whose name appears in the share certificate alone is entitled to vote in the Annual General Meeting of the company. It is not in dispute that in the present case, both the power of attorneys have been executed by the first holder whose name appears first in the share certificates. If the first holder is entitled to vote in respect of the shares held jointly, then the first holder can very well execute a power of attorney empowering some third person to vote on his behalf in respect of the shares held jointly. In such a case, the power of attorney need not be signed by all the joint holders and the power of attorney executed by the first holder alone would be valid. In other words, the power of attorney executed by the first holder alone in respect of shares held jointly would be valid. Accordingly, it was submitted that both the power of attorneys were valid and consequently the votes cast under both the power of attorneys were valid.

18. Learned counsel for the applicants further submitted that the power of attorney itself can be considered as proxy, because, under article 109 of the articles of association of the company, the instrument of proxy should be as near as practicable in the form

set out in Schedule IX of the Act. In other words, according to the learned counsel, neither the Act nor the Articles of Association of the company prescribe any particular form of proxy and any document which contains all the particulars set out in the general form of proxy set out in Schedule IX of the Act can be considered as a proxy. In the present case, the power of attorneys executed by applicant Nos.4 & 5 contained all the requisite information and in fact on being satisfied, the company has registered the same and issued voting slips to the power of attorney holder. According to the counsel for applicants, it is not the nomenclature but the contents of the document which is relevant for the purpose of proxy and, therefore, in the present case, the learned company Judge was justified is treating the power of attorney as proxy and that the votes cast by such proxy were valid.

19. Learned counsel for the applicants further submitted that even assuming that the power of attorney holder could not vote in respect of the shares held jointly, admittedly, the applicant No.4 held 960 shares in his individual name and, therefore, atleast the votes cast in respect of the said 960 shares by the power of attorney holder ought to have been held to be valid. If the said 960 votes cast by the power of attorney against the special resolution Nos.6,7 & 8

were taken into account, then the said resolutions would stand defeated. It is not in dispute that the said special resolutions have been carried as passed by a majority of 86 shares only. Once it is held that 960 votes cast against the special resolution Nos.6,7 & 8 were valid, then the said resolutions are liable to be declared as defeated. Therefore, the learned company Judge was justified in holding that the Chairman of the company ought to have held that atleast 960 votes cast by Mrs. Hirji were valid. Accordingly, the learned counsel for the applicants submitted that the order passed by the learned Judge is just and proper and no interference is called for in this appeal.

20. On careful consideration of the rival submissions, we do not find merit in the contentions raised by the appellants and, in our opinion, the decision of the learned company Judge deserves to be upheld.

21. As stated earlier, the question before us is, whether the power of attorneys executed by the first holder in respect of the shares held jointly are valid and whether the power of attorney is a proxy.

22. The word "power of attorney" and "proxy" are not defined under the Companies Act, 1956. Even the

articles of association of the company do not define these words.

23. Section 1A of The Powers of Attorney Act, 1882 defines the word ‘power of attorney’ to include any instrument empowering a specific person to act for and in the name of the person executing it.

24. Section 176 of the Companies Act, 1956 provides that a member of the company entitled to vote at the meeting of the company can appoint any other person (whether a member or not) as a proxy to attend and vote instead of himself.

25. Article 114 of the Articles of Association framed by the appellant No.1 company reads as under :-

> 114. On a poll taken at a meeting of the Company, a member entitled to more than one vote, or his proxy or other person entitled to vote for him as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses."
>
> (emphasis supplied)

26. On perusal of the aforesaid provisions of Companies Act and the articles of association of the company, it is seen that at the meeting of the company

not only the shareholder and the proxy holder but some other duly authorised person is also entitled to vote. In other words, at the meeting of the company the vote can be cast by the shareholder and in his absence his proxy or other person entitled to vote for him. As rightly contended by the learned counsel for the applicants, it is not the nomenclature but it is a substance of the document which is relevant. In the absence of the member, a person seeking to attend and vote at the meeting of the company must be duly authorised to do so by a valid document. Such a document may not be in the proxy form set out in Schedule IX of the Act, but shall meet the requirement of the company law i.e. the document contains all necessary particulars set out in form in Schedule IX of the Act. In the present case, both the power of attorneys have been found to be substantially complying with the requirement and contain necessary details and particulars and the appellant No.1 company after duly registering the said power of attorneys has issued voting slips to the power of attorney holder. In fact, the voting slips issued by the company specifically provides that the power of attorney holder is entitled to vote at the 28th Annual General Meeting of the company. Even at the meeting all the parties proceeded on the footing that the power of attorney holder is entitled to vote at the meeting and the dispute raised

was regarding the validity of the power of attorneys executed by the first holder instead of all the joint holders. Therefore, the question to be considered is, whether the first holder alone could execute a power of attorney in respect of shares held jointly ?

27. Article 101 of the articles of association framed by the company provides that where the shares are held jointly and more than one of such joint holders remain present at any meeting personally or by proxy, then, the person whose name stands first on the register (‘first holder’ for short) shall alone be entitled to vote in respect of the shares held jointly. The words ‘personally or by proxy’ used in Article 101 cannot be construed to mean that the right to vote at the meeting of the company is restricted to shareholder or to the proxy holder only. Article 109 framed by the company clearly provides that apart from shareholder and proxy holder, some other person can also be empowered to vote by executing a valid document. In other words, the first holder can himself vote or validly execute a power of attorney authorising some third person to vote for and on his behalf. As the first holder is entitled to vote in respect of the shares held jointly, the power of attorney executed by the first holder in respect of the shares held jointly would be valid and in that event it would not be

necessary for all the joint holders to sign the power of attorney. In other words, a power of attorney executed by the first holder authorising a specified person to vote for and on his behalf in respect of shares held jointly is valid. To be more specific, the power of attorney executed by the first holder in respect of the shares held jointly need not be signed by all the joint holders and it would suffice if the deed is signed by the first holder only. In this view of the matter, the Chairman of the company was clearly in error in ruling that the votes cast by the power of attorney holder are invalid on the ground that the power of attorneys were signed by the first holder only and the learned company Judge was justified in reversing the said ruling of the Chairman.

28. The second ground on which the votes were rejected by the Chairman was that the votes cast by the power of attorney holder were in excess of the number of shares mentioned in the power of attorneys. From the records it is seen that after the execution of the power of attorneys, the applicant Nos.4 & 5 individually and jointly had acquired additional shares which were recorded in the register maintained by the company. When the said power of attorneys were submitted for registration, the company found the same to be in order and after registering the power of

attorneys issued the voting slips to the power of attorney holder. In the voting slips issued by the company, the power of attorney was authorised to vote in respect of 4301 shares as per the register maintained by the company and not in respect of 4208 shares authorised under the power of attorneys. Accordingly, Mrs.Hirji cast her votes in respect of 4301 shares as per the voting slip. Thus, the votes cast by the power of attorney holder were in excess of the number of shares mentioned in the power of attorneys. The Chairman, instead of declaring the excess votes as invalid declared all the votes cast by the power of attorney to be invalid. In our opinion, the learned company Judge has rightly held that the Chairman of the company was in error in rejecting all the votes cast by the power of attorney holder. Since the votes cast by the power of attorney holder were otherwise valid, the Chairman ought to have held that the votes cast to the extent of the shares mentioned in the power of attorneys were valid. The learned company Judge was justified in holding that even if the 960 votes cast by the power of attorney holder in respect of the shares held individually by applicant No.4 were taken into consideration, the special resolution Nos.6,7 & 8 were liable to be declared as defeated.

29. It is true that the issue as to whether the

power of attorney can be treated as a proxy was not considered by the Chairman of the company while deciding the validity of the votes cast by the power of attorney holder. That issue was raised by the applicants for the first time before the learned company Judge. As we have held that the votes cast under both the power of attorneys are valid, it is not necessary to consider the issue as to whether the power of attorney is a proxy or not. However, the above issue being raised and decided by the company Judge and the counsel on both sides have also canvassed respective arguments before us, we deem it proper to deal with the said issue as well.

30. In our opinion, a shareholder may execute an instrument of power of attorney or an instrument of proxy empowering a specified person to vote on his behalf at the meeting of the company. If the instrument is in conformity with the proxy form set out in the schedule IX of the Act, then the company would register it and issue voting slip to such authorised person. Thus, a person authorised to vote under a validly executed power of attorney under The Powers of Attorney Act, 1882 may not be entitled to vote if the instrument of power of attorney is not in conformity with the proxy form set out in Schedule IX of the Act. In other words, only such an instrument of power of

attorney which is in conformity with the proxy form set out in Schedule IX of the Act will entitle the authorised person to vote.

31. Section 176 of the Companies Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint any person (where a member of not) as his proxy to attend and vote instead of himself. Although, Schedule IX of the Companies Act sets out the general form of proxy, Article 62 of the Schedule I to the Companies Act provides as follows :-

> "62. An instrument appointing a proxy shall be in either of the forms in Schedule IX to the Act or a form as near thereto as circumstances admit."

Similarly, Article 109 of the Articles of Association of the applicant No.1 company reads as under :-

> 109. The instrument of proxy shall be as near as practicable in the form set out in the schedule ix of the Act.

Therefore, even though Schedule IX of the Act sets out the form of proxy, it may be varied if the circumstances so require. In other words, the proxy form as set out in Schedule IX is not mandatory. So long as any instrument contains all the requisite

particulars set out in the form in Schedule IX it can be treated as a proxy. If an instrument like power of attorney contains all the requisite particulars, such as the name of the company, the name of the person executing the instrument, the name of the person empowered to vote as a proxy, etc. as set out in the form in Schedule IX to the Companies Act then such an instrument can be treated as a proxy. As stated earlier, the instrument of proxy is executed to empower a third person to vote at the meeting of the company for and on behalf of the person executing the instrument of proxy. Proxy is one acting for another. It is an authority or power to do a certain thing. A proxy is a lawfully constituted agent. A power of attorney is an authority given by a formal instrument whereby one person, who is called the donor or principal, authorises another person, who is called the donee, attorney or agent, to act on his behalf. In the absence of any specific bar, a power of attorney that substantially complies with the requirement of Schedule IX can be considered as proxy. In the present case, it is not dispute that the power of attorney executed by the applicant Nos.4 & 5 contains all the particulars set out in the form in Schedule IX and on being satisfied, the company has issued the voting slips in favour of the power of attorney holder. The fact that clause 2 of the power of attorney empowers the power of

attorney holder to vote himself or appoint a proxy, it does not mean that the power of attorney holder cannot vote without executing a deed of proxy in his own favour. Where the power of attorney holder himself decides to vote, then he has to forward the deed of power to attorney to the company and if the same is in conformity with the proxy form set out in Schedule IX, then the company would register it and issue voting slip to the power of attorney holder. In the present case, on registration of power of attorney, voting slips have been issued by the company to the power of attorney holder. Therefore, in the facts of the present case, the learned company Judge was justified in holding that the power of attorney constituted a proxy.

32. The contention of the appellants that the words ‘power of attorney’ and ‘proxy’ being different, the power of attorney cannot be considered as proxy is without any merit because, as stated earlier, the object of both the instrument of power of attorney as well as the instrument of proxy is to empower a third person to act for and on behalf of the person executing such instrument. So long as a document is in conformity with the form in Schedule IX of the Act, there is no impediment to consider that document as proxy. Similarly, the fact that the instrument itself

does not purport to be a proxy and the same is not registered as proxy makes no difference because, admittedly the voting slips issued by the company empowers both the power of attorney holder as well as the proxy holder to vote at the meeting of the company. In this view of the matter, we are of the opinion that in the facts of the present case, no fault can be found with the findings of the learned company Judge that the power of attorney is a proxy.

33. For all the aforesaid reasons, we are of the opinion that there is no merit in the appeal. Accordingly, the appeal is dismissed with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)